

ORDINANCE NO. 00- 037

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 2, ARTICLE III, DIVISION 2, PART A (THE PALM BEACH COUNTY PURCHASING ORDINANCE); AMENDING SECTION 2-51(e) "APPLICATION/EXEMPTIONS"; AMENDING SECTION 2-54(a) "SOURCE SELECTION"; AMENDING SECTION 2-54(d) "PROTESTED SOLICITATIONS AND AWARDS"; AMENDING SECTION 2-54(e) "SUSPENSION AND DEBARMENT"; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners enacted the "Palm Beach County Purchasing Ordinance" (codified at Chapter 2, Article III, Division 2, Part A, sections 2-51-2-70 of the Palm Beach County Code of Laws and Ordinances), which provides for a central purchasing system governing the procurement of goods and services for the County; and

WHEREAS, the Board of County Commissioners desires to amend the Purchasing Ordinance (codified at Chapter 2, Article III, Division 2, Part A, sections 2-51 - 2-70 of the Palm Beach County Code of Laws and Ordinances), to provide for procedures by which Special Masters are granted the authority to hear and decide bid protests.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

PART 1. Section 2-51(e) of the Palm Beach County Code, "Application/Exemptions," is amended as follows:

(e) Application/Exemptions: The provisions of this part shall apply to every purchase by the board of county commissioners from county funds, including state and federal assistance moneys, except as otherwise specified by law. This part shall not apply to:

(2) Procurement of dues and memberships in trade or professional organizations; subscriptions to periodicals; advertisements; postage; water, sewer, gas, and electrical utility services; copyrighted materials; items for resale; recreational instructors and sports officials; professional medical services; authorized hospitality expenses; procurements for constitutional officers; and fees and costs of job-

1 related seminars and training, to include materials provided with, or as an integral part of, that
2 training.

3 **PART 2. Section 2-54(a) of the Palm Beach County Code, "Source selection," is amended**
4 **as follows:**

5 (a) Source selection.

6 (9) Amendments/changes after award. The director of purchasing may authorize increases to the
7 authorized expenditure amount of a contract, except that increases of more than ten (10)
8 percent to authorized expenditure amounts which have reached or exceeded one hundred
9 thousand dollars (\$100,000.00) per annum must be approved by the board. After board
10 approval of an increased authorized expenditure amount, the director of purchasing may
11 authorize additional increases of up to ten (10) percent of the increased authorized
12 expenditure amount. Authority to increase any authorized expenditure amount is predicated
13 on the condition that all provisions of the original award, including the level of M/WBE
14 participation, remain intact and unchanged. The director of purchasing may approve
15 extensions of delivery dates and performance time on contracts to a maximum of ninety (90)
16 days provided that any changes to the existing authorized expenditure amount comply with
17 the provisions of this part.

18 **PART 3. Section 2-54(d) of the Palm Beach County Code, "Protested solicitations and**
19 **awards," is amended as follows:**

20 (d) Protested solicitations and awards.

21 (1) Right to protest. After posting, any actual or prospective bidder or proposer who is aggrieved
22 in connection with the pending award or other element of the process leading to the award
23 of a contract may protest to the director of purchasing. The right to protest is limited to those
24 procurements of goods, material, equipment, services and combinations of goods and/or
25 services, under the provisions of subsections 2-54(a), (b), (c)(6)a., (c)(7)a., and (c)(8) above.
26 (2) Notice. The protest shall be submitted within five (5) business days after posting of the
27 award recommendation. The protest must be in writing and must identify the protestor and
28 the solicitation and shall include a factual summary of the basis of the protest. Such protest
29 is considered filed when it is received by the department of purchasing.

(3) Authority to resolve. Protests filed in accordance with subsection (d)(2) above will be resolved under the provisions of this section.

a. The director of purchasing shall have the authority to review and attempt to resolve the protest informally. In those instances where the protest is filed by a certified M/WBE vendor or where the protest involves a minority/women business issue, the director of the office of small and minority/women business assistance will act in conjunction with, and with authority equal to, the director of purchasing in arriving at the determination to be made in this step of the process. After reviewing the facts surrounding the issues raised in the protest letter, the director of purchasing, and the director of the office of small and minority/women business assistance when applicable, may make the determination to:

1. Uphold the protest based on a violation of the provisions of this code or any other applicable county ordinance, on discovery of a patent irregularity or procedural flaw which is so severe as to render the process invalid. If the upholding of the protest will result in a change of the recommended awardee, a new award posting will be made in accordance with subsection 2-54 (a)(8) above. If the upholding of the protest will result in canceling the protested solicitation, a recommendation to uphold the protest and cancel the solicitation will be made to the Administrator, who may then direct the cancellation, or may refer the matter to a Special Master in accordance with Step 2 of the protest procedure as established in subsection 2-54(d)(3)d., except that the protestor will be exempt from posting a protest bond.

2. Deny the protest. If the protest is denied, the protestor has the right to request that the protest be referred to a Special Master in accordance with step 2 of the protest procedure as established in subsection (d)(3)d. below.

3. Refer the protest to a Special Master in accordance with step 2 of the protest procedure as established in subsection (d)(3)d. below, except that the protestor will be exempt from posting a protest bond.

b. In those instances where the protest is filed by a certified M/WBE vendor, or where the protest involves a minority/women business issue, any determination made must

1 be unanimous between the director of purchasing and the director of the office of
2 small and minority/women business assistance. If unanimity cannot be achieved, the
3 protest will automatically be referred to a Special Master in accordance with step 2
4 of the protest procedure as established in subsection (d)(3)d. below, except that the
5 protestor will be exempt from posting a protest bond.

6 c. The director of purchasing shall promptly issue a written statement of the
7 determination, providing the reason for that determination, and providing copies to
8 the protestor and to any other intervening party.

9 d. If the protestor wishes to continue the protest after it has been denied by the director
10 of purchasing under the provisions of subsection (d)(3)a.2. above, the protestor shall
11 be required to request a hearing before a Special Master. This request shall be made
12 in writing to the director of purchasing within five (5) working days of issuance of
13 the director of purchasing's determination under the provisions of subsection (d)(3)c.
14 above. This written request for a hearing before a Special Master must be
15 accompanied by a protest bond of an amount equal to the actual cost of the Special
16 Master or one-quarter ($\frac{1}{4}$) of one (1) percent of the value of the solicitation,
17 whichever is greater, but in no case less than one hundred dollars (\$100.00) nor
18 greater than one thousand five hundred dollars (\$1,500.00). This bond shall be in
19 cash or by a money order, certified, cashier's or bank check payable to Palm Beach
20 County.

21 e. Under the circumstances provided for in subsections 2-54(d)(3)a.3. and (d)(3)b. and
22 (d)(3)d., protest hearings pursuant to this Code shall be conducted by designated
23 Special Masters, who shall have the jurisdiction and authority to hear and decide
24 protests.

25 1. Conduct of Hearing.

26 a. All hearings shall be open to the public, and a record shall be kept of
27 all hearings.

28 b. County staff, the protestor and any directly affected party shall be
29 entitled to appear as parties at a hearing, submit evidence and present
30 testimony of witnesses (in instances where there is a protest of a

suspension, only county staff and the protestor shall be entitled to appear). A directly affected party means any other actual or prospective bidder or proposer on the procurement at issue.

c. At the hearing, the burden of proof shall be upon the protestor to show by clear and convincing evidence that the award should be overturned. Where proper notice of the hearing has been provided to the protestor, a hearing may proceed even in the absence of the protestor.

d. Notice of hearing. County shall notify protestor and the intended awardee by regular mail of the time, date and location of the scheduled hearing.

e. The formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Upon determination of the Special Master, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form.

f. The Special Master shall make a recommendation as to whether the protest should be upheld or denied.

g. If the Special Master determines the solicitation or award is in violation of federal, state or local law, policy, procedures or regulations, the Special Master shall make a recommendation to cancel the solicitation or cancel the award and post a new award after a reevaluation of bids based on the Special Master's determination of fact in the case, and return the protestor's bond.

h. If the Special Master determines the solicitation or award should be upheld, the Special Master shall make a recommendation to proceed

1 with the posted award in accordance with the rules and regulations of
2 purchasing and forfeit the protestor's bond.

3 i. At the conclusion of the hearing, the Special Master is encouraged to
4 orally render his or her recommendation, specifying the basis for such
5 recommendation on the record. The Special Master shall transmit his
6 recommendation in writing to the director of purchasing within 48
7 hours of the conclusion of the hearing. The director of purchasing
8 shall distribute a copy of the Special Master's recommendation to the
9 protestor and all participating directly affected parties.

10 j. In making contract awards for procurements of \$100,000 or more, the
11 Board may accept or reject the recommendation of the Special
12 Master.

13 k. In making contract awards for procurements of less than \$100,000,
14 the staff may accept the Special Master's recommendation. In making
15 contract awards for procurements of less than \$100,000 where staff
16 determines the Special Master's recommendation is not in the
17 County's best interest, staff may refer the award to the Board for
18 approval. At that time, the Board may accept or reject the Special
19 Master's recommendation.

20 l. Nothing contained herein shall limit or divest the Board of its
21 authority pursuant to Chapter 125, Florida Statutes as referenced in
22 Section 2-51(a) of this Code.

23 2. Applications for Special Master. The County will establish by separate policy
24 and procedure memoranda ("PPM") an impartial method of selecting and
25 assigning Special Masters to conduct hearings.

26 3. Qualifications. Special Master(s) shall have the following minimum
27 qualifications:

28 a. Be a current member, in good standing, of the Florida Bar
29 Association;

30 b. Engaged in the practice of law for no less than three (3) years;

- 1 c. No disciplinary action by The Florida Bar Association or bar
2 association of any other jurisdiction within the past five (5) years; and
- 3 d. Other applicable qualifications that may be established by the County.
- 4 4. Powers and Duties. Special Masters shall have the power to hold hearings
5 and make recommendations as are necessary to determine whether a protest
6 shall be upheld or denied.
- 7 5. Term. Special Masters shall serve a term of one (1) year and may be
8 reappointed at the discretion of the Administrator. There shall be no limit on
9 the number of terms a person may serve as a Special Master.
- 10 6. Removal. At any time during the appointment, the Administrator shall have
11 the authority to remove a Special Master with or without cause upon ten (10)
12 days written notice.
- 13 7. Conflicts of Interest. The Special Master shall be subject to PPM# CW-O-52
14 relating to outside counsel conflicts of interest. The Ethics Rules of The
15 Florida Bar on conflicts of interest shall apply. If a Special Master is unable
16 to give a fair hearing for any reason, that Special Master should request the
17 director of purchasing to reassign the case to another Special Master.
- 18 8. Protest Hearings.
- 19 a. Scheduling. The director of purchasing shall be responsible for
20 scheduling hearings before the Special Masters.
- 21 b. Contacting the Special Master. At no time shall a protestor or any
22 other directly affected party contact a Special Master regarding the
23 issues of the bid protest.
- 24 c. Location. The location of the hearings shall be in Palm Beach
25 County, Florida.
- 26 d. Operating procedures. All cases brought before Special Masters shall
27 be presented on behalf of the County by the director of purchasing or
28 designee. Where the protest is filed by an M/WBE vendor or
29 involves an M/WBE issue, the director of the office of small

1 minority/women business assistance or designee may present
2 pertinent M/WBE issues.

3 9. Compensation. The County may promulgate rules by separate policy and
4 procedure memoranda regarding the compensation of the Special Masters.

5 10. Rules of Procedure. The County shall have the authority to prescribe rules
6 and regulations by separate PPM for selection of Special Masters, the protest
7 process and the conduct of hearings before the Special Masters.

8 (4) Stay of procurement during protests. Notwithstanding anything contained herein to the
9 contrary, in the event of a timely protest, the director of purchasing shall stay the award of
10 the contract unless the director, with the advice of the county attorney and after consultation
11 with the using department, makes a determination that the award of the contract without
12 delay is necessary to protect substantial interests of the county government.

13 (5) Reservation of powers to settle actions pending before the courts. Nothing in this section is
14 intended to affect the existing powers of the Board to settle actions pending before the courts.

15 **PART 4. Section 2-54(e) of the Palm Beach County Code, "Suspension and debarment,"**
16 **is amended as follows:**

17 (e) Suspension and debarment.

18 (5) Finality of decision. The suspension or debarment shall be final and conclusive unless the
19 suspended or debarred vendor initiates protest proceedings. Protests will be initiated under
20 the procedures provided in subsection (d) above except that: a. The preliminary review of the
21 director of purchasing as set forth in subsection (d)3.a. above will be waived, b. The
22 suspension will be in effect pending result of the protest and c. The allowable time for
23 protesting the suspension or debarment will be twenty-one (21) calendar days after the date
24 of notification provided in subsection (e)(4) above.

25 **PART 5. CAPTIONS**

26 The captions, sections, headings, and section designations used in this ordinance are intended for the
27 convenience of the users only and shall have no effect in the interpretation of the provisions of this
28 Ordinance.

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PART 7. SEVERABILITY:

PART 8. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

PART 9. EFFECTIVE DATE:

The provisions of this ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,

Florida, on this the 26th day of September, 2000.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: Maudie Ford Lee

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney

DOROTHY H. WILKEN, CLERK
Board of County Commissioners

By Judith L. Breahe
DEPUTY CLERK

Chair COUNTY COMMISSIONERS

EFFECTIVE DATE: Filed with the Department of State on the 10th day of October, 2000.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on September 24, 2000
DATED at West Palm Beach, FL on 11/6/00
DOROTHY H. WILKEN, Clerk
By: William Brown